



lesser-included offense of attempted robbery. Counsel contended that there was an issue for the jury as to whether the robbery was completed because Vickers never left the premises of E-Z Mart with the money. The trial court refused to give the attempted-robbery instruction, and Vickers was convicted of robbery.

Our supreme court has held that a party is entitled to a jury instruction when it is a correct statement of the law, and there is some basis in the evidence to support giving the instruction. *Barnes v. Everett*, 351 Ark. 479, 95 S.W.3d 740 (2003). We will not reverse a trial court's decision to give an instruction unless the court abused its discretion. *Id.*

On appeal, Vickers argues that the trial court abused its discretion when it failed to give the jury the attempted-robbery instruction. He contends that whether his conduct constituted an attempted robbery or the full commission of robbery was an issue for the jury to determine; therefore, the jury should have been instructed on both robbery and attempted robbery.

In order for a defendant to be entitled to an instruction on a lesser-included offense, two conditions must be satisfied. *Weber v. State*, 326 Ark. 564, 933 S.W.2d 370 (1996). First, the proffered instruction must truly cover a lesser-included offense. *Id.* Second, there must be a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense. *Id.*; Ark. Code Ann. § 5-1-110(c) (Repl. 2006).

As for the first condition, according to statute, attempt is a lesser-included offense. Ark.

Code Ann. § 5-1-110(b)(2) (Repl. 2006).<sup>1</sup> As for the second condition, there was no rational basis for a verdict acquitting Vickers of robbery and convicting him of attempted robbery. All of the evidence presented demonstrated that Vickers completed the offense of robbery.

A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person. Ark. Code Ann. § 5-12-102(a) (Repl. 2006). A person commits theft of property if he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). “Physical force” means any bodily impact, restraint, or confinement. Ark. Code Ann. § 5-12-101(1) (Repl. 2006).

The evidence presented at trial established that Vickers entered the E-Z Mart, struck an E-Z Mart employee with his elbow, knocked the employee against the counter, and removed money from the cash register. This evidence supports each of the elements of the crime of robbery. Despite Vickers’s arguments to the contrary, it is of no significance that Vickers never made it out of the convenience store with the money. The robbery was completed while Vickers was still inside the store, before he tried to make his escape. We will

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<sup>1</sup>Section 5-1-110(b)(2) provides: “A defendant may be convicted of one (1) offense included in another offense with which he or she is charged. An offense is included in an offense charged if the offense: . . . [c]onsists of an attempt to commit the offense charged or to commit an offense otherwise included within the offense charged . . . .”

affirm a trial court's decision to refuse instructions on a lesser-included offense if there is no rational basis for giving the instruction. *Harshaw v. State*, 71 Ark. App. 42, 25 S.W.3d 440 (2000). In the case at bar, there was no rational basis for giving the lesser-included instruction for attempted robbery. As such, we hold that the trial court did not abuse its discretion in denying the proffered instruction.

Affirmed.

HART and BROWN, JJ., agree.